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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	10/824,889	
	Filing Date	04/14/2004	
	First Named Inventor	Toby Wexler	
	Art Unit	3644	
	Examiner Name	Kimberly Smith	
Total Number of Pages in This Submission	3	Attorney Docket Number	

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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Robert N. Montgomery
Signature	<i>Robert N. Montgomery</i>
Date	7-18-05

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE,**

**DATE: 18 July 2005:**

**APPLICANT: Toby Wexler**

**SERIAL NO: 10/824,889**

**GROUP ART UNIT: 3644**

**FILED: 4/14/2004**

**EXAMINER: Kimberly Smith**

**FOR Animal toe nail covering and method of manufacture**

**The Honorable Commissioner of Patents & Trademarks  
WASHINGTON, D. C. 20231**

**Sir**

In response to Office action Mailed 07/14/2005 regarding an election requirement, Applicant hereby elects claim 1-17 for prosecution in this application with traverse.

Examiner makes a distinction between clipping the animal's nails and filing the nails as a means for practicing the invention by a materially different process. Applicants totally disagree with examiner on this point. Filing and clipping are obvious equivalents for removing a portion of the animal's nails. Other means for removing a portion of the nail could easily include sawing, grinding, and sanding all of which are certainly equivalent under the statute of equivalence for achieving the purpose of removing a portion of an object.

Use of the term clipping was chosen simply because it's the most common practice for removing a portion of the animal's nails. Examiner's implication that the use of such equivalent methods of removal are distinct from each other seeks to establish as fact that these methods are distinct thus removing applicant's ability to make an argument in court that they are indeed equivalent. It's very doubtful that examiner would allow an application by others based solely on such a distinction. Such a process claim would certainly be rejected under 35 USC 103 as being an obvious equivalent.

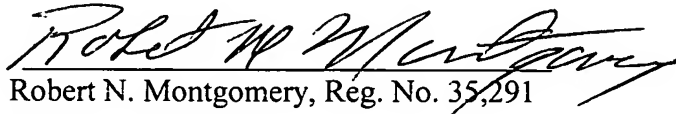
If examiner holds the election to be valid in this case a new set of claims would necessarily be required to claim the process for each and every possible means for removing a portion of an object in a subsequent application. Such claims would become monotonous.

Further, by raising this point as a requirement for election, examiner is predetermining equivalence and thus preventing applicant from combining the structure of the animal cap with the application of the novel caps to an animal toe nail as allowed by statute and rules. The rules allow the applicant to claim both product and process for his invention especially when the process is limited to the product claimed. There is simply no legal support in this case that filing

the toe nail constitutes a materially different method of use in view of the product limitation in the claim.

It is respectfully request that the restriction requirement be withdrawn and the application be prosecuted intact.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert N. Montgomery", written over a horizontal line.

Robert N. Montgomery, Reg. No. 35,291

Date: 18 July 2005

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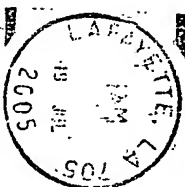
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